

APPEAL NO. 030560
FILED APRIL 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 18, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable low back injury on _____, and has had disability resulting from the compensable injury from November 16, 2002, through the date of the CCH. The appellant (self-insured) appealed, arguing that the hearing officer erred and acted outside the scope of his authority when he modified the date of injury to _____. The self-insured argues that the date of injury was not an issue before the hearing officer. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The issues reported out of the benefit review conference were: (1) Did the claimant sustain a compensable injury on (alleged date of injury)? and (2) Did the claimant have disability resulting from an injury sustained on (alleged date of injury), and if so, for what period(s)? The self-insured argued that the date of injury was not an issue at the CCH and that the hearing officer acted outside his scope of authority in finding that the claimant sustained a compensable injury on _____.

The claimant testified that she injured her low back while lifting a box of frozen food. The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and had disability beginning on November 16, 2002, and continuing through the date of the CCH. The issues of whether the claimant sustained a compensable injury and had disability were questions of fact for the hearing officer. We have observed that the resolution of disputed issues is not governed by the strict rules of pleading as practiced at common law or in the district courts of the State of Texas. See Texas Workers' Compensation Commission Appeal No. 951848, decided December 18, 1995, and cases discussed therein. Thus, some leeway, consistent with express provisions of the 1989 Act and implementing rules, is to be given to the parties to resolve substantive issues as expeditiously as possible provided that due process principles of fundamental fairness are observed in the joining of issues at each stage of the adjudicatory process. We have also stressed that the inclusion of a date of injury is "essential" to resolving the compensability of an injury. Texas Workers' Compensation Commission Appeal No. 94713, decided July 12, 1994. Consistent with these principles, we have not required that the date of injury found by a hearing officer be the same as the date alleged by the claimant when the evidence indicates otherwise. Texas Workers' Compensation Commission Appeal No. 941029, decided September 16, 1994. In cases of accidental injuries, the variation in the date of injury found and the date claimed is generally limited to one or two days or the choices

of dates of injury are limited. Texas Workers' Compensation Commission Appeal No. 970107, decided March 5, 1997. The hearing officer has a duty to select a date of injury when there are discrepancies in the date claimed. Appeal No. 94713, *supra*.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no legal basis to overturn the hearing officer's factual finding regarding injury.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DM
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge